IN THE HIGH COURT OF BOMBAY AT GOA

LETTERS PATENT APPEAL NO. 1 OF 2006

Mr. Ulrich Angerer,
House No.291/1(A),
3rd Ward,
Colva, Salcete, Goa. .... Appellant

versus

The Goa Coastal Zone
Management Authority,
by its Member Secretary,
c/o Department of Science,
Technology & Environment,
Opp. Saligao Seminary,
Saligao, Bardez, Goa. .... Respondent

Mr. A. F. Diniz, Advocate for the Appellant.

Mr. S. S. Kantak, Advocate General with Ms. R. Chodankar, Additional Government Advocate for the Respondent.

CORAM : R. M. S. KHANDEPARKAR &
N. A. BRITTO, JJ.

DATE : 23RD JANUARY, 2006.

ORAL JUDGMENT(Per R.M.S.KHANDEPARKAR, J.)

Heard the learned Counsel appearing for the appellant at

length, as well as the learned Advocate General. Admit. By consent, heard forthwith.

2. The impugned Order is sought to be challenged on three grounds. Firstly, that the learned Single Judge overlooked the survey plan, copy of which was placed on the record of the Writ Petition No.557/2004 at page 50 which revealed existence of a structure therein and further that the plan annexed to the Sale Deed dated 8-7-1992 also reflected the existence of the structure in the property sold under the said Deed. It is further contended on behalf of the appellant that the said plan appended to the Sale Deed was prepared on 28-6-1983 as is indicated from the plan itself. Besides, the undisputed photographs of the structure were clicked in the year 1987. The license issued by the Panchayat on 20-10-1992 was also overlooked by the learned Single Judge by approving the finding arrived at by the respondents, about the absence of structure in the property prior to 1991. The second ground of challenge is that the learned Single Judge misconstrued the submission as regards Clause II(ii)(a) of Order dated 26-11-1998 regarding the Goa Coastal Zone Management and failed to consider that in order to exercise the powers under the said provision of law, the authority must be satisfied about the specific case necessarily requiring exercise of the powers thereunder and considering the materials

placed on record before the authority which apparently disclosed the existence of the old structure, there was no occasion for the authority to exercise the powers under the said provision of law and this aspect was totally overlooked by the learned Single Judge while dismissing the Writ Petition. The third ground of challenge is that the learned Single Judge also overlooked that the power for ordering demolition of such structure could be exercised within a reasonable period from the date of construction of the structure, and certainly it cannot be said that the authority acted within the reasonable period in 2004 considering the fact that the structure was in existence much prior to 1991.

3. Three points arise for determination in this appeal. Firstly whether the impugned Order fails to consider the documentary evidence on record? Secondly whether Clause II(ii)(a) of the said Order dated 26-11-1998 has been misconstrued by rejecting the Writ Petition? And thirdly, whether there has been unreasonable delay in taking action and on that count the impugned Order stands vitiated?

4. The perusal of the impugned Order discloses that the appellant has challenged the Order dated 26-10-2004 passed by the Goa Coastal Zone Management Authority on two grounds. Firstly, that the materials on record

disclosed existence of structure much prior to 1991 which was totally overlooked by the authority and secondly, the authority had exercised the powers in contravention of the provisions of Clause II(ii)(a) of the above referred Notification. The ground of alleged unreasonable delay in exercise of powers was not raised before the learned Single Judge as is apparent from the impugned Order, and it is also an undisputed fact.

5. As regards the first ground of challenge, the learned Single Judge in his Order after reproducing para 6 of the Order of the authority held that the finding arrived at by the authority in the said para do not suffer from any infirmity and clearly disclosed that the offending structure had come into existence after February, 1991. The materials which were placed before the learned Single Judge in support of the contention that the structure existed much prior to 1991 comprised of Sale Deeds along with the plan annexed to the Sale Deed dated 8-7-1992, new survey plan dated 23-4-2003, Records of Right Certificate, N.O.C. for repairs by the Panchayat issued on 20-10-1992, two House Tax Receipts for the year 2002-03 and 2001-02, as well as for 2003-04, a letter by an Architect dated 17-8-2004 and 3 photographs of the alleged structure allegedly clicked on 5-1-1987. The finding arrived at by the learned Single Judge clearly discloses reference of all these materials before upholding the finding by the

authority while ruling that it does not seem to suffer from any infirmity, and this is obvious from the perusal of the said record. Undisputedly, the Sale Deed dated 8-7-1992, does not refer to existence of any structure in the property in question. It is pertinent to note that the Sale Deed dated 8-7-1992 fully described the property in the schedule of the said Deed and specifically recorded the said property having transferred and conveyed together with all the trees, water sources, liberties, access, privileges, easements and appurtenances. Absence of reference to any structure either in the Deed or in the schedule appended to the Deed, loudly pronounces hollowness in the claim of the appellant about existence of structure in the property even prior to 1992. Undoubtedly, the copy of the plan stated to have been annexed to the said Sale Deed discloses some structure along with a cross thereon in the said plan. It also appears that the plan was traced on 26-6-1983 as the date appears on the copy of the plan. However, it is not known whether the original certified copy of the plan which was obtained by the appellant from the authorities made any reference to any such structure in the plan of the property. It was sought to be argued before us by the learned Counsel for the appellant, the original copy of the plan was produced before the authority. Admittedly, it was a copy which was issued to the appellant on 23-4-2003 much after the year 1991. The original copy of the plan appended to the Sale Deed dated 8-7-1992 was

neither produced before the concerned authority nor before the learned Single Judge. There was no occasion either to the authorities or to the learned Single Judge to verify whether the copy of the plan annexed to the Sale Deed dated 8-7-1992 was a genuine copy. Merely because there was no dispute raised by the party that is not sufficient to accept. Certainly it was the contention of the appellant that the structure was in existence prior to 1991 and that fact itself is in dispute. It was necessary for the appellant to produce cogent material to produce the truthfulness of the contents of the said plan. Mere failure on the part of the respondent/Government authorities cannot compel the Court to accept whatever is stated as the gospel truth. It is also to be noted that the learned Advocate General has submitted that the contention on the part of the appellant that the plan at pages 49 and 50 of the petition were not disputed by the respondent is not correct. In fact, they were disputed and that the original plan of the property did not disclose any structure in the property in question, whereas the structure was subsequently sought to be introduced in the said plan. Being so, the learned Advocate General contended that the contention that all the records placed by the appellant were undisputed is not true. This is also apparent from the record as is observed above.

6. Apart from the said survey plan there is absolutely no material

to suggest that the structure in question was in existence prior to 1991. The record of rights certificate does not disclose any existence of such structure. The N.O.C. stated to have been issued by the Panchayat in 1992 does not disclose that the house was in fact in existence prior to the date of issuance of the so-called N.O.C. The N.O.C. is stated to have been issued in reply to the application dated 6-9-1992. No copy of such application dated 6-9-1992 was ever placed before the learned Single Judge. What were the contents of the application and what were the annexures thereto is not known. As regards the House Tax Receipts and the Light Tax Receipts, admittedly, they are of the year 2001 onwards. It is not even the case of the appellant that there was any payment of House Tax any time prior to 1992 and for that matter even prior to 2000, in relation to the alleged structure. As regards the certificate of the Architect dated 17-8-2004 it nowhere refers to existence of structure prior to 1992. It merely specifies physical inspection of structure in August, 1992. As regards the three photographs undoubtedly, the date on the photographs refers to 5-1-1987. The photographs were apparently clicked after necessary plastering and painting of the house. It does not disclose any sort of dilapidated condition of the structure or the need of repairs either from outside or inside. The certificate which has been issued by the Architect in 1992 merely discloses that the structure needs repairs including plastering, water proofing etc. Apparently,

therefore, there are sufficient reasons to doubt the genuineness of the claim as also regarding the date in the photographs is concerned. Admittedly, the appellant was not the owner of the structure prior to 2000. There is no explanation anywhere as to how the appellant came into possession of these photographs if they were clicked prior to 2000. What was the cause for clicking these photographs. In normal circumstances this may not be relevant but considering the facts that the very existence of the structure in the year 1987 and prior to it, and even till 1992 was disputed, it was necessary for the appellant to explain all these aspects and place on record the materials regarding the need for obtaining those photographs and the occasion for getting those photographs in possession of the appellant. Nothing is placed in that regard on record. No much value can be attached to those photographs regarding the existence of the structure prior to 1991. In the circumstances, therefore, no fault can be found with the finding that the authority had correctly arrived at the finding that GCZMA does not reflect the structure and, therefore, the offending structure could not have come into existence prior to February, 1991. The finding is neither perverse nor contrary to the materials on record. On the contrary, it is clearly borne out from the record.

7. The next ground of challenge relates to the alleged

misconstruction of Clause II(ii)(a) of Order dated 26-11-1998 by the learned Single Judge. The contention of the learned Counsel in that regard is that in order to exercise the powers under the said provision of law it was necessary for the authority to find out necessity in the specific case for issuing directions under Section 5 of the Environment Protection Act, 1986. In that connection, reliance is sought to be placed in a decision in the case of **Minoo Framroze Balsara** v. **The Union of India and others**(AIR 1992 Bombay 375) while specifically drawing attention to paras 34 and 35, thereof.

8. Clause II(ii)(a) of the said Order dated 26.11.1998, reads thus:

> "(ii)(a) Inquiry into cases of alleged violations of the provisions of the said Act and/or the rules made thereunder, or under any other law which is relatable to the objects of the said Act and, if found necessary in a specific case, issuing directions under section 5 of the said Act insofar as such directions are not consistent with any direction issued in that specific case by the National Coastal Zone Authority or by the Central Government".

9. While referring to the said Clause and noting the submission of the learned Counsel, the learned Single Judge has observed that "it is not that in each and every case of violation the demolition order should be passed; it can only be done if it is found necessary in a specific case by the authority and further dealing with this contention it was held that "the contention has no merit and does not deserve to be accepted. The mere fact that the offending structure has come into existence after 19th February, 1991, i.e. after the coming into force of the Coastal Regulation Zone Notification of 1991 and that it falls within 200 meters of the High Tide Line, it is but necessary that the offending structure must be demolished and that is what the authority has ordered". The contention of the learned Counsel appearing for the appellant however, is that the authority should have first arrived at a finding about the necessity of exercise of such powers in this specific case and the show cause notice issued to the party should have disclosed such necessity in order to enable the party to file effective reply to such notice. Support is sought to be derived to this contention from the decision in the case of **Minoo Framroze Balsara** v. **The Union of India and others**(supra) while specifically referring to paras 34 and 35, thereof.

10. The Division Bench of this Court in **Minoo Framroze Balsara** v. **The Union of India and others**(supra) while dealing with a case under the

Public Premises(Eviction of Unauthorised Occupants) Act, 1971 and more particularly dealing with the scope of Sections 4 and 5 thereof held that prima facie satisfaction of the Estate Officer is a sine qua non of the issuance of the show cause notice. The prima facie satisfaction must be two-fold, firstly, that the addressee is in unauthorised occupation of public premises, and, secondly, that he should be evicted. The notice must set out the grounds on which the order of eviction is proposed to be made. It must, therefore, state not only why the addressee is thought to be in authorised occupation but also why it is thought that he should be evicted. It must inform the addressee that he is entitled to show cause against the proposed order of eviction. The addressee cannot effectively show cause unless he knows why the Estate Officer is of the opinion that he is in unauthorised occupation. He also cannot show effective cause unless he knows why his eviction is proposed. The provisions of Section 4 make it clear that the addressee may seek a personal hearing from the Estate Officer and may lead evidence for the purposes of showing cause against the proposed order of eviction. In para 35 of the Judgment, it was held that "under Section 5 of the Estate Officer must consider the cause that is shown by the addressee. Plainly, he must consider the addressee's case on both grounds, viz. whether he is in unauthorised occupation of public premises and whether he should be evicted. Even if he finds that the addressee is in unauthorised

occupation, the Estate Officer is not obliged to make an order of eviction; he may make it. It is, therefore, that he has to consider whether the addressee should be evicted". All these observations have been made with reference to Section 4(1) of the Public Premises(Eviction of Unauthorised Occupants) Act, 1971 which reads thus:

> "Section 4(1) If the Estate Officer is of opinion that any persons are in unauthorised occupation of any public premises and that they should be evicted, the Estate Officer shall issue in the manner hereinafter provided a notice in writing calling upon all persons concerned to show cause why an order of eviction should not be made.....".

11. Apparently, the said ruling of the Division Bench is in relation to Section 4(1) of the Public Premises Eviction Act, which specifically requires the Estate Officer to ascertain whether the person is in unauthorised premises and further whether he should be evicted therefrom. As regards Clause II(ii)(a) of Order dated 26-10-2004 quoted above undoubtedly, the authority has to ascertain whether there is a case of violation of the Coastal Regulation. When the fact about the existence of the structure within the range of 200 meters from the High Tide Line and that

the structure having come into existence after 19-2-1991 is clearly established, it apparently discloses a specific case and necessity on the part of the authority not only to exercise that power but it would reveal a duty on the part of the authority to comply with the provisions of the said Order which are essentially bearing in mind the provisions of the Environment Protection Act, 1986. Being so, no fault can be found even with the finding arrived at by the learned Single Judge as regards the construction of Clause II(ii)(a) of the said Order.

12. The last ground of challenge relates to undue delay in exercise of powers under the said Clause. First of all, such a ground was not canvassed before the learned Single Judge. Therefore, the appellant is not entitled to raise such ground for the first time in L.P.A. An attempt was made to draw our attention to the case of **Sharda Devi** v. **State of Bihar and another**((2003) 3 SCC 128) by the learned Counsel for the appellant more particularly to the observation in para 25 that though no limitation is provided for making a reference under Section 30 of the Act, i.e. where no period of limitation for exercise of any statutory power is prescribed, the power should be exercised within a reasonable period. What is a reasonable period in a given case would depend on the facts and circumstances of each case. The decision should then in any manner justify the contention on the

part of the authority to exercise that power. Violation in relation to Environmental Laws merely because there is some lapse on the part of the authority, that can be no justification to contend that mere delay of some few years would create any right in favour of the person who has violated the provisions of environmental law. Certainly a period of 10 years may otherwise be a long period but if the authorities having brought to their notice or noticing any illegality in relation to the environmental law and CRZ Regulations nothing would prevent them from taking appropriate action. Being so, even on merits, there is no substance in the recording of undue delay for taking action. The learned Advocate General has also drawn our attention to the show cause notice dated 9-2-2004 and has submitted that there was no delay as such in taking proposed action. Para 2 of the show cause notice clearly revealed that action was initiated pursuant to site inspection consequent to the Circular issued by the Goa Government on 26-12-2003 for ascertaining illegal constructions or the constructions in violation of CRZ Regulation. The illegality committed by the appellant in relation to the structure was noticed by the authority and consequently action was initiated. Therefore, according to the learned Advocate General there was no delay on the part of the authority or otherwise any delay in taking the action.

13. For the reasons stated above, therefore, there is absolutely no case neither the authority can be found faulted with either in relation to the said Order passed by the authority.

14. The appeal, therefore , is dismissed.

R. M. S. KHANDEPARKAR, J.

N. A. BRITTO, J.

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